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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,347	02/19/2002	Christopher J. Tatar	FS-00689	1368
7590	04/22/2004		EXAMINER	
McGuire Woods 1750 Tysons Boulevard, Suite 1800 Tysons Corner McLean, VA 22102-4215			SHARMA, RASHMI K	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/076,347	TATAR ET AL.
	Examiner	Art Unit
	Rashmi K. Sharma	3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11,14-16 and 18-22 is/are rejected.
- 7) Claim(s) 12,13 and 17 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12/22/2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the steps of "positioning the diverting mechanism...." before "determining a diverting direction.....". It appears as though these two steps should be reversed so that the diverting mechanism should be placed into position after the diverting direction has been assessed. Clarification is required.

Claim Rejections - 35 USC ' 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11, 14-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finch Jr. (US patent number 5,620,102).

Finch Jr. discloses a conveyor sorting system and diverting mechanism for packages comprising a frame member (46) adapted for use with an existing

conveyor system (12, 18) for transporting an item in an original direction (here, the direction of conveyance in figure 1), a bi-directional movable diverting mechanism (36) extending from the frame (46) being movable substantially perpendicular to the original direction of travel of the item being transported on the existing conveyor system and diverting the item in either a first direction or a second opposing direction. Finch also discloses a downwardly extending blade (see figure 6) having a first surface and a second surface adapted for diverting the item. The movable diverting mechanism (36) remains stationary allowing items conveyed to pass through without being diverted, a moving mechanism (see figure 2), an actuator (48 or 50), a gliding mechanism (see column 3 lines 39-67) to move the movable diverting mechanism (36), a mounting mechanism (38). Finch Jr. also discloses classification information associated with the item allowing the diverting mechanism (36) to be activated accordingly.

4. Finch Jr. as disclosed above, fails to show a plurality of sensors for determining whether a current associated with the actuator exceeds a threshold limit and a jam detection sensor for detecting jams exceeding a threshold characteristic to thereby prevent the diverting mechanism from diverting items.

Finch Jr. however, does disclose means (20) for preventing the diverting mechanism (36) from diverting packages in case of jams and/or items prevented from approaching the diverting position (please read column 4 lines 51-67 and column 5 lines 1-4)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace Finch Jr.'s means (20) with that of

additional sensors in order to control the movement of Finch's diverting mechanism, as sensors are well known in the art and are considered to be functionally equivalent.

Allowable Subject Matter

5. Claims 12, 13 and 17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. The following is a statement of reasons for the indication of allowable subject matter:

Dependent claims 12, 13 and 17 recite the structural limitations of the package diverting mechanism comprising safety hoods, in combination with the independent claim or any intervening claims, clearly defines over the prior art. The addition of a safety hood thereby allows an operator and/or the area around the conveying system to be protected and safe from possible malfunctions of the conveyor system.

None of the prior art references taken individually or collectively teach or anticipate the limitations as quoted in the above dependent claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

8. It should be noted that the Examiner's rejection above encompasses each diverting mechanism (36) to be referenced as smaller parts within a larger, whole unit (defined by all diverter's (36) grouped together), thereby having the larger unit as the entire diverting mechanism (36) in order to meet the claim limitations.

Conclusion

9. Any inquiry concerning this communication should be directed to Rashmi Sharma who can be reached at 703-306-5952 Monday through Friday.

Any general inquiry concerning the status of this application should be directed to the Group receptionist Monday through Friday at 703-308-1113.



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